

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 79/2007 & CM No. 3931/2007**

Judgment reserved on : August 03, 2009

Date of decision : August 25, 2009

SUKHBIRI DEVI & ORS. Appellant
Through : Mr. J.C. Mahindroo, Advocate

Versus

UOI & ORS. Respondents
Through : Mr. S.D. Singh, Advocate for
defendant No. 5.
Mr. Pawan Mathur, Adv. for
DDA.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported in the Digest ? Yes

J U D G M E N T

ARUNA SURESH, J.

1. The appellants (hereinafter referred to as plaintiffs) filed a suit for declaration with consequential relief of injunction against the respondents (hereinafter referred to as defendants) seeking decree of

declaration declaring that plaintiffs are the co-owners in the allotment of the suit plot No.13, Type A-1, Sector-26, Rohini, New Delhi and that defendant No. 5 is not the exclusive owner of the said plot in suit. Plaintiffs further sought relief for permanent injunction seeking restraint order against the defendant No.5 from selling, conveying, transferring or alienating the said plot to anyone whosoever and for restraining defendants No.1 to 4 from delivering the physical possession and the titles of the said plot to defendant No.5 or his nominee. The said suit was dismissed by the trial court vide its judgment and decree dated 13.5.2005. Against this order, plaintiffs filed first regular appeal before the Additional District Judge. The said appeal was dismissed by the appellate court vide its judgment dated 8.12.2006. Aggrieved by the judgment of the first appellate court, the second appeal has been filed by the plaintiffs under Section 100 of the Civil Procedure Code (hereinafter referred to as CPC).

2. Following substantial question of law was

formulated on 3.8.2009:-

“Whether the trial court rightly construed the provision of Limitation Act while coming to the conclusion that the suit was barred by limitation and also the date from which the cause of action is alleged to have accrue in favour of plaintiff while considering the issue of limitation.”

3. Mr. J.C. Mahindroo, learned counsel for the plaintiffs, has contended that the cause of action arose in favour of the plaintiffs on 9.1.1976 when the lands of Sh. Rama Nand were acquired and thereafter it arose when Sh. Rama Nand died and his estate was inherited by his heirs. He argued that cause of action further arose when application for alternative plot was made by the defendant No.5 by playing fraud and claiming himself to be the sole and exclusive heir of the deceased Rama Nand. It further arose when objection applications were made with the defendants No.1 to 4 on various dates. He further submitted that cause of action again arose when Nahar Singh died on 14.5.1993 and plaintiffs being his legal heirs stepped into his shoes and again it arose when the allotment was made and then when the defendant No.5 started

holding himself to be the exclusive allottee and tried to negotiate for sale of the allotment of the suit plot and lastly on 27.5.2000 when defendant No.5 finally refused to accede to the request of the plaintiffs. Therefore, according to him the suit has been filed within the period of limitation of three years which started running against the plaintiffs on 27.5.2000 and the suit was filed on 29.5.2000 i.e. well within the period of limitation.

4. Mr. S.D. Singh, learned counsel for the defendant No.5 has submitted that the suit of the plaintiffs as per their own admission in the plaint is barred by period of limitation. Article 58 of the Schedule to the Limitation Act prescribes period of limitation of three years for a suit seeking declaratory relief and limitation started running when the right to sue first accrued. He further argued that the plaintiffs and their predecessor in interest had come to know about the misuse of the impugned relinquishment deed executed on 21.10.1985 vide letter dated 8.3.1991 and they has raised objection vide their application dated 5.4.1991 objecting to the

allotment of the plot to the defendant No.5. He further argued that suit property was allotted to defendant No.5 by the DDA in the year 1994.

5. It is submitted by the learned counsel that draw of lots is the consequence of recommendation and allotment on the basis of relinquishment deed and plaintiffs cannot question the draw of lots unless the relinquishment deed, recommendation, sanction and allotment made in the year 1991 and 1994 are declared null and void. Therefore, apparently the relief of declaration as claimed by the plaintiffs is barred by period of limitation.
6. Article 58, Schedule I, Part III, of the Limitation Act prescribes the period of limitation to obtain a declaration not covered by any other article under this part (part III). It reads:-

Description of suit	Period of limitation	Time from which period begins to run
Article 58. — To obtain any other declaration.	Three years.	When the right to sue first accrues.

7. Article 58 of the Limitation Act therefore is a residuary article so far as the suits for declarations are concerned excepting declarations under Article

56 and 57.

8. Thus, it is clear that period of limitation for suits for declarations is three years from the date when the right to sue first accrues. What is relevant in this article is that the limitation starts running on the date when the right to sue first accrues and not on subsequent dates even if a cause of action has arisen on subsequent occasions as well. The right to sue can be treated as having arisen when there was clear or unequivocal threat proceeding from the opponent and that a threat which clearly invades or jeopardizes the plaintiffs' right can be taken as giving rise to a cause of action to take steps for smothering such a threat. As per the language of the article computation of the period of limitation has to be done by tracking it back to the time when the right to sue accrued for the first time.
9. The exact antecedent of the word 'first' in article 58 is that when any act or assertion of the defendant threatened that gives plaintiff a cause of action. In a suit for declaration the right to sue accrues when

the defendant actually tries to assert his right and interferes with the possession of the plaintiff and not when the defendant is successful in getting the property in his name.

10. The impugned relinquishment deed was executed by the predecessor in interest of the plaintiffs in favour of Dhan Singh defendant No.5 on 21.10.1985. Nahar Singh, predecessor in interest of the plaintiffs, got the knowledge that Dhan Singh had misused the said relinquishment deed in order to deprive his rights and that of other legal heirs of deceased Rama Nand in the alternative plot to be allotted in lieu of the acquired land vide letter No. 31(11)/8/87 L&B/Alt/8226 dated 8.3.1991. This letter was addressed to defendant No.5 by Land and Building Department regarding allotment of alternative plot. Thereafter Nahar Singh wrote an objection letter dated 5.4.1991 to DDA and Land and Building Department. He died on 14.5.1993. Plaintiff No. 1 also filed an objection application addressed to Joint Secretary Land and Building on 9.5.1995, 16.9.1998, 3.8.1999 and thereafter.

11. Letter dated 30.12.1994 was written by Land and Building department to DDA requesting it to allot an alternative plot to Dhan Singh. A list of allotment was circulated wherein the name of Dhan Singh was shown at No. 023(0018)/94 as allottee of 300 sq. meter plot at Rohini. Vide letter dated 7.7.2000 DDA informed Dhan Singh that it had recommended allotment of an alternative plot to him on perpetual lease hold basis vide Land and Building department letter dated 30.12.1994. As per para 25 of the plaint, cause of action lastly arose on 27.5.2000 when defendant No.5 finally refused to accede to the request of the plaintiffs. Therefore, as per the pleadings contained in the plaint itself, the cause of action first accrued in favour of the plaintiffs or their predecessor in interest i.e. Nahar Singh on his coming to know of letter dated 8.3.1991 that Dhan Singh had misused the relinquishment deed in order to get the alternative plot in lieu of the acquired land allotted in his name. Correspondences exchanged between Nahar Singh and the departments as well as the present plaintiffs and

the defendants No. 1 to 4 cannot be construed as giving rise to any fresh cause of action in favour of the plaintiffs and against the defendants. Even if the cause of action arose on the date when the allotment letter was circulated in the year 1994 wherein defendant No.5 has been shown as an allottee of 300 sq. meter of plot at Rohini, then also the present suit is barred by period of limitation having been filed on 29.5.2000. Reference is made to ***Secretary, Ministry of Works and Housing v. Mohinder Singh Jagdev and others – (1996) 6 SCC 229 and State of Punjab v. Balkaran Singh – (2006) 12 SCC 709.***

12. Learned counsel for the plaintiffs has referred to ***Ajudh Raj and others v. Moti – (1991) 3 SCC 136.*** This case is of no help to the plaintiffs as it related to a suit for title to an immovable property and it was observed that where a suit for title to an immovable property; subject matter of the case under a special act, if an adverse order comes in the way to the success of the plaintiff, he must get it cleared before proceeding further. But in case

such order has been passed without jurisdiction, the same can be ignored being a nullity, i.e. non-existent in the eyes of law and such a suit will be governed by article 65. The facts and circumstances of this case are completely different in nature and the relief claimed is of declaration for declaring the relinquishment deed executed by the predecessor in interest of the plaintiffs as null and void.

13. Similarly ***Kuldeep Singh v. Ganpat Lal and another - (1996) 1 SCC 243***, wherein an application under Order VII Rule (1)(e) CPC was filed for eviction of a tenant on the grounds of default in payment of rent for six months and the plaint did not disclose the cause of action, it was observed that purpose of plaintiff in indicating the date on which the cause of action arose would be of little consequence if the cause of action had arisen on the date on which the suit was filed and the suit was within limitation on the said date, does not come to the rescue of the plaintiffs in any manner.

14. Plaintiffs have claimed knowledge of misuser of the

impugned relinquishment deed by Dhan Singh vide letter dated 8.3.1991. As per Section 17 of the Limitation Act the plaintiffs have to prove that they were kept out of the knowledge of their right to sue or apply by that fraud or mistake. This is not the case before me. In case of a suit or an application, limitation runs from the date when the fraud becomes known to the plaintiffs or applicant who is injuriously affected by the fraud. The knowledge referred to in Section 17 of the Act is clear and definite knowledge of the facts constituting the particular fraud and not a mere suspicion. To bring a case within the Section the plaintiff or applicant must allege both the fraud and the date when the fraud pleaded came to his knowledge. As pointed out above, plaintiffs have pleaded fraud and its knowledge vide letter dated 8.3.1991. Therefore, even by virtue of Section 17 of the Limitation Act, period of limitation started running against the plaintiffs on 8.3.1991. The present suit having been filed on 29.5.2000 is after the expiry of period of three years and therefore is barred by period of

limitation.

15. The first appellate court rightly observed that cause of action arose in favour of Nahar Singh on the date when it came to his knowledge on 8.3.1991 that a fraud had been played upon him by defendant No.5 and since he did not choose to get the impugned relinquishment deed cancelled during his life time and the present suit having been filed on the basis of alleged cause of action having accrued on the subsequent dates i.e. date of allotment is barred by period of limitation.
16. Learned counsel for the plaintiffs has referred to letter dated 7.7.2000 whereby DDA informed Dhan Singh that it had recommended allotment of an alternative plot to him on perpetual lease on the basis of the Land and Building department letter dated 30.12.1994 and therefore, according to him a fresh cause of action arose in favour of the plaintiffs on 7.7.2000. The present suit having been filed in the same year is within the period of limitation.
17. As discussed above, the cause of action first accrued in favour of the predecessor in interest of

the plaintiffs on 8.3.1991 when Nahar Singh came to know about the fraud being played by Dhan Singh to get the alternative plot allotted in his name on the basis of the relinquishment deed and therefore, by virtue of article 58 the period of limitation started running against Nahar Singh and thereafter his legal heirs; the plaintiffs from 8.3.1991. The present suit having been filed after nine years is barred by period of limitation.

18. Therefore, I conclude that the trial court rightly construed the provisions of Limitation Act while coming to the conclusion that the suit was barred by period of limitation and also the date on which the cause of action accrued in favour of the plaintiffs while considering the issue of limitation.

19. Hence, I find no merits in the appeal and the same is accordingly dismissed.

**(ARUNA SURESH)
JUDGE**

AUGUST 25, 2009
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